HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos.73 and 74 of 2007

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Writ Appeal No.73 of 2007

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Between:

Government of Andhra Pradesh,

represented by its Secretary,

Irrigation & CAD (PWD) Department,

Hyderabad and others. …Appellants

And

K.V.S.N.Raju …Respondent.

Writ Appeal No.74 of 2007

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Between:

Government of Andhra Pradesh,

represented by its Secretary,

Irrigation & CAD (PWD) Department,

Hyderabad and others. …Appellants

And

M/s.Mahendra Kumar N.Shah …Respondent.

:: J U D G M E N T ::

Counsel for the appellants : Assistant Government

Pleader for Irrigation.

Counsel for the respondents : Sri B.Siva Kumar for

Sri G.Vidyasagar.

22nd January, 2007

Per G.S. SINGHVI, C.J.

These appeals are directed against order dated 21-8-2006 passed by the learned Single Judge, whereby he allowed the writ petitions filed by the respondents and quashed their blacklisting by the Chief Engineer (Projects), N.S.R.P.S., Hyderabad (appellant No.2 herein).

The factual matrix of the case, as discernible from the record of these cases, is that in pursuance of tender notice dated 8-2-2000 issued by Superintending Engineer, AMRP, Circle No.1, Irrigation Department, G.V.Gudem, Nalgonda District (appellant No.4 herein), inviting bids for the work of fabrication and erection of gates for the head regulator of AKBR of AMRP Lift Scheme, the respondents, who are Special Class Contractors, submitted their respective tenders. The technical bids were opened on
2-3-2000 and both the respondents were declared qualified for participation in the price bid. As per the tender notice, the price bids were to be opened on 8-3-2000, but the same was postponed four times and were ultimately opened on 10-4-2000. The respondents were asked to extend the validity period up to 31-8-2000 and 30-11-2000 respectively. They did the needful. It is borne out from the record that appellant No.4 asked for further extension of the validity of tenders, but this was not agreed by the respondents. Therefore, their earnest money deposits were returned by treating them as disqualified and fresh tenders were called for the same work vide notice dated 6-2-2001. Respondent, M/s.Mahendra Kumar N.Shah again submitted its bid, but the other respondent did not participate in the fresh tender process. During the process of evaluation of tenders received pursuant to notice dated
6-2-2001, some complaints were received by the authorities that while submitting tenders pursuant to notice dated 8-2-2000, the respondents had suppressed information. Thereupon, show cause notices were issued to the respondents proposing to blacklist them on the ground of suppression of information in the tenders and violation of Clause 2.07 (b) of the tender document. The respondents submitted written explanations. They pleaded that G.O.Ms.No.521, Irrigation and Command Area Development (PW) Department, dated 10-12-1984 was not applicable to their cases and that there was no justification to blacklist them on the basis of the alleged suppression of information in the tenders submitted in 2000. On merits, they pleaded that they had not suppressed any information regarding the pending works. Respondent, M/s.Mahendra Kumar N.Shah also stated that there was no fly slip of Clause 2.07 (b) attached to page 4 of the tender and its representative had not signed on such slip. After considering their explanations, appellant No.2 passed orders dated 6-2-2004, whereby he blacklisted the

respondents.

The respondents challenged their blacklisting in Writ Petition Nos.2736 and 3756 of 2004. The learned Single Judge, after adverting to the pleadings of the parties and perusing the original records, quashed the orders impugned in the writ petitions. The learned Single Judge held that the so-called suppression of some information in the tenders submitted pursuant to notice dated 8-2-2000 could not justify blacklisting of the writ petitioners. The relevant extracts of the order of the learned Single Judge are reproduced below:

> "It is noticed that the petitioner in Writ Petition No.2736 of 2004 did not sign on the fly slips against condition No.2.07(b) of the tender document. Insofar as the petitioner in Writ Petition No.3756 of 2004, it is found that the fly slips were subsequently attached. It is also the fact that in subsequent tenders, this clause was not there. Learned counsel for the petitioners stated that even assuming that there is some lapse on the part of the petitioners in submitting certain information, that may result in rejection of the tender, but not blacklisting him for ever. Further, it is also a fact that the tenders were not fructified. In fact, they were lapsed and for a lapsed tender, it cannot be said that action can be initiated by the respondents for disqualifying the petitioners on the ground that they have suppressed information regarding completion of certain works, which were on hand. Further, on an examination of the tender forms submitted by the petitioners, it is revealed that at the end of the tenders, there were no fly slips and whatever is available at condition Nos.2.07(b), 3.01(b) and 25.17 were again hand written, but the original of which is not available. There is no explanation for the necessity of reintroducing them at the end of the tender forms again and it seems, that is not in original handwriting. They are all Xerox copies. Further, the signature of the Superintending Engineer is not available in the tender notices, on each page. This itself would show how the matter was dealt with. May be, the respondents are entitled to take action as per the tender notice. After all, it is a contract between the parties. Even in a case where some information is suppressed for the purpose of gaining advantage of being qualified for the tender, but that itself does not mean they can take action as they like. The tender notice/schedules were not properly made and as noticed above, the petitioner in Writ Petition No.2736 of 2004 has not signed and in other Writ Petition, though the petitioner's signatures are available, in both the cases, the Superintending Engineer has not signed on each and every page of the contract. Further, it may be noticed that during the pendency of the Writ Petitions, the petitioners were allotted more than one contract and they are continuing with the same.
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> In view of the fact that the very contract itself lapsed and the tender notice was not properly made and signatures were not properly taken, it cannot be said that the petitioners are bound by clause No.2.07(b) of the tender notice (fly slip). Further, the petitioners have explained the position stating that the works, which were shown to have been completed, were really completed; but no certificate was given by the authorities. In view of the above, I am of the opinion that blacklisting of the petitioners, particularly for the lapses of this nature is neither warranted nor tenable. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the concerned authority is to have an objective satisfaction. The way in

which the tender documents are maintained, the way in which fly slips are introduced and the way in which certain clauses, which are already there, are reintroduced in handwriting (xerox) does not inspire the confidence of the Court to say that the respondents have acted in a fair manner while blacklisting the petitioners. Further, the impugned Orders are passed blacklisting the petitioners for indefinite period. It may be said that the Government is exercising its right like any other private citizen, but no democratic Government should with impunity pass proceeding, which will have civil consequences to a citizen, without fair play. It is altogether different that the works purported to have been completed were at the threshold. The fact that the works, which were shown to be completed, were at the verge of completion and actually completed before finalization of the tenders is not seriously disputed."

Learned Assistant Government Pleader for Irrigation argued that the writ petitions filed by the respondents were not maintainable because the issue relating to their blacklisting fell in the realm of contract. She submitted that the power vested in the High Court under Article 226 of the Constitution of India cannot be exercised for enforcing contractual rights or obligations or breach of the contract, and as the blacklisting of the respondents was done in accordance with the terms and conditions of the government orders regulating award of contracts, the learned Single Judge was not justified in nullifying the same. She further argued that the suppression of information by the respondents in the tenders submitted pursuant to notice dated 8-2-2000 constituted a valid ground for blacklisting them and the learned Single Judge committed a serious error by interfering with the discretion exercised by appellant No.2.

In our opinion, there is no merit in the arguments of the learned counsel. The question whether the High Court can, in exercise of the power under Article 226 of the Constitution of India, interfere with an order of blacklisting, is no longer res integra and has to be answered in affirmative in view of the judgment of the Supreme Court in **M/s.Erusian Equipment and Chemicals Ltd. v. State of West Bengal**. The propositions laid down in that case read as under:

"20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

17. The Government is a government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so

fairly without discrimination and without unfair procedure. Reputation is a part of person's character and personality. Blacklisting tarnishes one's reputation.

18. Exclusion of a member of the public from dealing with a State in sales transactions has the effect of preventing him from purchasing and doing a lawful trade in the goods in discriminating against him in favour of other people. The State can impose reasonable conditions regarding rejection and acceptance of bids or qualifications of bidders. Just as exclusion of the lowest tender will be arbitrary, similarly exclusion of person who offers the highest price from participating at a public auction would also have the same aspect of arbitrariness.

19. Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. A body may be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sections involved therein."

The propositions laid down in the aforementioned judgment have been reiterated by the Supreme Court in **Joseph Vilangandan v. Executive Engineer (PWD)**, **Raghunath Thakur v. State of Bihar**, and **Southern Painters v. Fertilisers & Chemicals Travancore Ltd.**. Reference in this connection can also be made to the judgment of the Supreme Court in **Style (Dress Land) v. Union Territory, Chandigarh**. In that case, the Supreme Court considered whether the government can impose arbitrary conditions in the lease of the shops and laid down the following proposition:

"Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary in whatever sphere must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all powers must be for public good instead of being an abuse of power. Action of renewability should be gauged not on the nature of function but public nature of the body exercising that function and such action shall be open to judicial review even if it pertains to the contractual field. The State action which is not informed by reason cannot be protected as it would be easy for the citizens to question such an action as being arbitrary."

In view of the above stated legal position, we have no hesitation to reject the argument of the learned Assistant Government Pleader that the writ petitions filed by the respondents were not maintainable.

On the merits of the case, we are in complete agreement with the learned Single Judge that the so-called suppression of information in the tenders submitted by the

respondents pursuant to notice dated 8-2-2000 was inconsequential and, in any case, after withdrawal of the previous tender process, appellant No.2 was not justified in blacklisting the respondents and that too for indefinite period.

No other point has been argued.

In the result, the appeals are dismissed.

As a sequel to dismissal of the appeals, WAMP (SR). Nos.125083 and 125077 of 2006 filed by the appellants for suspending the operation of the orders of the learned Single Judge are also dismissed.

G.S.SINGHVI, C.J.

22nd January, 2007

C.V.NAGARJUNA REDDY, J.

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